

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ELECTIONS

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SPECIAL BOARD MEETING

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FRIDAY

JULY 21, 2023

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The District of Columbia Board of Elections convened a Special Board Meeting via Video-Teleconference, pursuant to notice, at 2:00 p.m. EDT, Gary Thompson, Chair, presiding.

BOARD OF ELECTIONS MEMBERS PRESENT:

GARY THOMPSON, Chair
J.C. BOGGS, Member
KARYN GREENFIELD, Member

BOARD OF ELECTIONS STAFF PRESENT:

MONICA HOLMAN EVANS, Director
TERRI STROUD, General Counsel
CECILY COLLIER-MONTGOMERY, Office of
Campaign Finance

1 P-R-O-C-E-E-D-I-N-G-S

2 (2:00 p.m.)

3 CHAIR THOMPSON: Happy Friday. It's
4 a pretty nice day out there. Thank you,
5 everybody, for being here. My name is Gary
6 Thompson, the Chair of the Board of Elections,
7 and joining us today are my fellow board members,
8 Karyn Greenfield and J.C. Boggs.

9 We have a quorum. The very first
10 thing I'll do is make a motion that we depart
11 from our executive session which we've been in to
12 deliberate. Do I hear a second?

13 MEMBER BOGGS: Second.

14 CHAIR THOMPSON: All right. All in
15 favor?

16 (Chorus of aye.)

17 CHAIR THOMPSON: Okay, we have exited
18 our executive session, and we are now here with
19 you, the public, to make a determination on the
20 matter pending before us, the Make All Votes
21 Count Act of 2024.

22 Before we do that, I just want to take

1 a moment and say thank you again to everybody who
2 has submitted testimony, written comments,
3 supplemental written comments. This morning we
4 received a new batch of written comments, both
5 for and against. And we had enough time to read
6 and study those.

7 I also just want everybody to know
8 that we studied everything you submitted, every
9 citation you gave us, every case you mentioned,
10 we really worked hard on this one because we want
11 to get it right. And your comments were really,
12 really helpful to all of us at the Board of
13 Elections to make sure we were reading everything
14 that we should read to understand these issues
15 and to keep careful track of other jurisdictions
16 and, in some cases, courts that have commented on
17 them. And of course, among your comments, we
18 read a lot of commentary about the wisdom of the
19 two proposed measures, either ranked choice
20 voting or a partially open primary, and we
21 appreciate those.

22 But as I said in the last hearing, our

1 job on the Board of Elections is not to opine on
2 whether there should or shouldn't be ranked
3 choice voting or whether there should or
4 shouldn't be an open primary. Our focus in this
5 hearing is whether these things constitute a,
6 quote, proper subject under the D.C. Charter,
7 under the D.C. Code, which also incorporates
8 asking ourselves whether these measures are
9 constitutional, consistent with the D.C. Human
10 Rights Act, consistent with the D.C. Charter.

11 So that has been our focus. And
12 before I make a motion, I also want everybody to
13 know, and hopefully to appreciate, that we are an
14 independent agency and an independent board. The
15 board itself of the Board of Elections, the three
16 of us, J.C. Boggs, Karyn Greenfield, and myself,
17 we are private citizens. We don't work for the
18 D.C. government. We are appointed by the mayor,
19 confirmed by the Council. We are called upon for
20 this civic service, and we truly are independent.

21 And I would like everybody to know and
22 appreciate that nobody calls us, nobody lobbies

1 us, no elected politicians, you know, have called
2 me and told me anything about their views on
3 this. And in fact, the only time the three of us
4 have spoken about this on the merits is in our
5 executive session, which we announced at the last
6 public record. And we had some time, the three
7 of us to share our thoughts and views and ask
8 each other questions, which we did in a very
9 deliberative way. And now we're out of that
10 executive session. So hopefully to our
11 independence and integrity, I thought it would be
12 good for everyone to hear that reminder as to who
13 we are.

14 So we heard all your testimony at our
15 last hearing. We talked about it, we
16 deliberated, we thought through every single
17 issue that you raised, and at this time I'm going
18 to make a motion.

19 And my motion -- by the way, there's
20 no public comment in this public hearing. We've
21 heard that from you, and so we'll just -- I'll
22 make my motion on the record, we'll make some

1 comments, and then vote, and that will conclude
2 the meeting.

3 So my motion is to declare that the
4 proposed voter initiative called the Make All
5 Votes Count Act of 2024, does present a proper
6 subject of initiative under D.C. law without
7 running afoul of the D.C. charter, D.C. Code 1-
8 1001.16, the U.S. Constitution, or the D.C. Human
9 Rights Act. In short, my motion is that we
10 approve the voter initiative as a, quote, proper
11 subject for the ballot.

12 And my motion having been stated, I
13 would ask if there's a second.

14 MEMBER GREENFIELD: I second.

15 CHAIR THOMPSON: And before I call the
16 vote, as is customary, all three commission --
17 all three board members -- I said commissioners
18 because I used to be an ANC commissioner. All
19 three board members may want to comment. We
20 don't have to, we can just vote, but I'll just
21 share briefly my own thinking.

22 The first issue is whether the voter

1 initiative appropriates funds or requires the
2 allocation of revenues to new or existing
3 purposes. The answer to me is no, it does not,
4 because the proposed initiative incorporates a
5 clause that makes it subject to appropriations.

6 And as one of the witnesses, an
7 attorney, very candidly stated, it remains a
8 completely independent decision of the D.C.
9 Council as to if this passes, as to whether or
10 not they would appropriate funds to implement it.
11 That will remain completely within their
12 discretion. That's the core reason. I certainly
13 read the Campaign for Treatment case, at page 797
14 in particular, which the OAG pinpointed. To me
15 that was the sort of key turn in the case law
16 that gave me comfort in that regard.

17 With respect to the ranked choice
18 voting component of the initiative, I don't find
19 that it violates the D.C. Charter or the
20 Constitution or the Human Rights Act. There's
21 been some case law on this topic in other
22 jurisdictions that has found that ranked choice

1 voting is not unconstitutional. And once again,
2 whatever I may or may not think about ranked
3 choice voting in terms of its wisdom, this vote
4 is simply to let the voters make that decision.

5 And finally, with respect to the
6 partially open primary component, that's the one
7 I struggled with the most, as I think I indicated
8 on the record last time. And I want to thank the
9 supplemental submissions in particular for
10 helping us parse and zero in on what it is we're
11 deciding here.

12 And ultimately, I found that it does
13 not run afoul of our D.C. charter. We will still
14 have, quote, partisan elections in that after the
15 primary process, each party will still have a
16 party nominee and only one on the general ballot.
17 Neither do I find that it violates the
18 Constitution or the D.C. Human Rights Act,
19 largely for the reasons that cases in other
20 jurisdictions, and in one Supreme Court case in
21 particular had pointed out. And once again, I
22 don't know whether it's wise or unwise, it's just

1 something that to me it is an issue that we can
2 certify as a, quote, proper subject matter and
3 pass on to the voters to decide.

4 So that's -- there's a lot of detail
5 in all of that, but that's my thinking in terms
6 of why I made the motion and why I plan to vote
7 for it. And with that, I'll ask Board Member
8 Greenfield next if she'd like to make some
9 comment.

10 MEMBER GREENFIELD: First of all, I
11 want to reiterate the thanks for all of the
12 hearing and all of the information and the
13 testimony. I think this is more than I've ever
14 seen before. I understand that means that's how
15 important it is. But it was very helpful on
16 that, I want to thank and appreciate it. We did
17 do a lot of deliberation on this issue.

18 But as we stated, agreement with what
19 the motion is, for other reasons, I do think that
20 they've addressed the issue in terms of
21 appropriation of funds with the language that's
22 in the initiative itself. And the open primary

1 or even the RCV is not a violation of the D.C.
2 home charter, and that this is an initiative that
3 needs to get in front of the voters. Based on
4 that reason, it should get in front of the voters
5 based on that reason. And that's the only
6 determination you make is, is it a proper subject
7 matter -- a proper subject of the initiative. We
8 don't make any decision on the merits itself.

9 CHAIR THOMPSON: And Member Boggs.

10 MEMBER BOGGS: Yes, thank you, Gary
11 and Karyn. I'm just going to add my thanks to my
12 colleagues on the board. They're really true
13 public servants. We had a great discussion on
14 Wednesday and earlier today about this. It was
15 dispassionate, it was thoughtful, and I think
16 came to a good and unanimous conclusion to send
17 this to the voters.

18 Now I think we may all have different
19 views on open primaries and ranked choice voting.
20 I don't know what your views are. It was
21 dispassionate, and we really got to the nugget
22 here. We're not opining on the merits or the

1 wisdom of either. But this deserves -- it was a
2 proper subject, and it deserves to move forward.

3 I also want to thank the staff of the
4 Board of Elections. They do a tremendous job in
5 helping prepare us. I see Terri Stroud on here
6 too, and she was part of the discussion and very
7 helpful. So it makes my job or our job easier, I
8 think, in working with these legal issues. We
9 put a lot of time and thought into this.

10 And my third thanks goes really to all
11 of you who participated in educating us on the
12 issues, both for and against. It's extremely
13 helpful. There were some excellent memos on the
14 merits, on the legal issues, on just generally
15 your views on the subject, and not just in
16 writing, but earlier this week at our hearing.

17 I typically plan about an hour for
18 these monthly meetings, and I think that went for
19 maybe three hours more or less, four hours, and a
20 great discussion, and just it's super helpful to
21 us, but also it's just, you know, heartwarming to
22 me to see that interest from folks, again, on

1 both sides of the issue and taking time out of
2 your days, busy days to weigh in on it.

3 So those are my three thanks, to my
4 colleagues, to the staff, and to all of you.
5 Thanks.

6 CHAIR THOMPSON: Okay, with that we'll
7 do a roll-call vote. I am in favor of the
8 motion.

9 Board Member Greenfield, how do you
10 vote?

11 MEMBER GREENFIELD: Aye. I'm in favor
12 of the motion.

13 CHAIR THOMPSON: Board Member Boggs?

14 MEMBER BOGGS: Aye.

15 CHAIR THOMPSON: All right, we are
16 unanimous. We have a lot of steps between now
17 and the time this may appear on the ballot.
18 Obviously the opponents have other options, but
19 I'll ask our General Counsel Stroud to address
20 next steps.

21 MS. STROUD: Thank you, Mr. Chair, and
22 good afternoon, everyone. A subject matter

1 determination having been made with respect to
2 the Make All Votes Count measure, the Board shall
3 assign a serial number to the initiative measure.
4 This would be initiative measure 83. Within 20
5 calendar days after acceptance, the Board has
6 several tasks that it must complete.

7 It must prepare a summary statement
8 that bears the serial number and expresses the
9 purpose of the measure. It must prepare a short
10 title that will allow voters to readily identify
11 the initiative measure and distinguish it from
12 others that may appear on the ballot. It must
13 prepare formulations in the proper legislative
14 format, and we do this with the assistance of the
15 Attorney General and the General Counsel for the
16 Council, and they are -- to that end they provide
17 feedback with respect to the legislative form.

18 Finally, we must request a fiscal
19 impact statement from the Office of the Chief
20 Financial Officer. And the -- we will get a
21 request out to the Chief Financial Officer either
22 today or Monday, and the Chief Financial Officer

1 has 15 business days of the date that we request
2 such fiscal impact statement. And so if we send
3 it out on Monday, that request would need to be
4 fulfilled by August 14th.

5 And so after the receipt of the fiscal
6 impact statement, then the Board will hold a
7 public meeting to adopt the formulations. That
8 would take place at a public meeting where we
9 would -- we will have prepared our language for
10 the formulations, and then there's the
11 opportunity for the public to weigh in on the
12 appropriateness of the language proposed.

13 And then within 24 hours after that
14 public meeting, we would publish the summary
15 statement and formulations and the fiscal impact
16 statement on our website and submit it to be
17 published in a newspaper of general circulation.
18 And we would also publish the formulations in the
19 D.C. Register. And that's an important date
20 because it does trigger a period during which the
21 formulations can be challenged.

22 And so that -- those are just

1 basically the next steps, and then depending on
2 the outcome of all of those processes, the Board
3 would also hold another public meeting to issue
4 the petition which would be used to circulate the
5 initiative measure.

6 And so, Mr. Chair, and for members of
7 the public, that -- those are basically the next
8 steps. So again, we would look to hold a public
9 hearing regarding the formulations at some point
10 after August 14th, which would be the date by
11 which the fiscal impact statement would have to
12 be provided by the Chief Financial Officer.

13 CHAIR THOMPSON: All right, thank you
14 so much for that. We won't take questions now,
15 but obviously there are multiple steps ahead,
16 and at each step we will communicate by notices
17 and publications. So everybody who is a part of
18 this or everybody who wants to follow this will
19 have future opportunities to make comment. And
20 obviously, as Terri Stroud just explained it, if
21 it gets to this point, petitions would be issued
22 and that's for signature gathering. And at a

1 point beyond that, we would still have to certify
2 that enough signatures are gathered as we had
3 some, you know, close calls with the last voter
4 initiative, 82, in that regard.

5 So it's a long road ahead before, you
6 know, it's on the ballot. All of these
7 procedures are there to -- for the best interests
8 of the voter, to make sure that what the voter
9 sees next year, if this makes it that far, is
10 proper and fair.

11 And I guess to kind of cap it off,
12 democracy belongs to the voters, and the voters
13 will decide whether they want these things or
14 don't want these things. And that's where it's
15 heading. So we really thank you again. It's
16 been really educational. And as a Board member
17 and as an attorney, really thoroughly interesting
18 to take a close look at all this.

19 So with that, unless any other Board
20 members or our General Counsel have anything,
21 I'll -- not seeing anything, I will move that we
22 adjourn and enjoy our weekend. That's part of

1 our motion, move that we adjourn and enjoy our
2 weekend. Is there a second?

3 MEMBER GREENFIELD: I second.

4 CHAIR THOMPSON: Okay. All in favor?

5 (Chorus of aye.)

6 CHAIR THOMPSON: All right, thank you
7 everybody.

8 (Whereupon, the above-entitled matter
9 went off the record at 2:27 p.m.)

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A	busy 12:2	constitute 4:5	EVANS 1:18
above-entitled 17:8	C	Constitution 6:8 7:20	everybody 2:5 3:1,7
acceptance 13:5	calendar 13:5	8:18	4:12,21 15:17,18 17:7
Act 2:21 4:10 6:5,9 7:20	call 6:15	constitutional 4:9	excellent 11:13
8:18	called 4:19 5:1 6:4	convened 1:11	executive 2:11,18 5:5
add 10:11	calls 4:22 16:3	core 7:12	5:10
address 12:19	Campaign 1:19 7:13	Council 4:19 7:9 13:16	existing 7:2
addressed 9:20	candidly 7:7	Counsel 1:18 12:19	exited 2:17
adjourn 16:22 17:1	cap 16:11	13:15 16:20	explained 15:20
adopt 14:7	careful 3:15	Count 2:21 6:5 13:2	expresses 13:8
afoul 6:7 8:13	case 3:9 7:13,15,21	course 3:17	extremely 11:12
afternoon 12:22	8:20	Court 8:20	
agency 4:14	cases 3:16 8:19	courts 3:16	F
agreement 9:18	CECILY 1:19	customary 6:16	fact 5:3
ahead 15:15 16:5	certainly 7:12		fair 16:10
allocation 7:2	certify 9:2 16:1	D	far 16:9
allow 13:10	Chair 1:12,14 2:3,6,14	D.C 4:6,7,9,10,18 6:6,7	favor 2:15 12:7,11 17:4
ANC 6:18	2:17 6:15 10:9 12:6	6:7,8 7:8,19 8:13,18	feedback 13:17
announced 5:5	12:13,15,21 15:6,13	10:1 14:19	fellow 2:7
answer 7:3	17:4,6	date 14:1,19 15:10	finally 8:5 13:18
appear 12:17 13:12	challenged 14:21	day 2:4	Finance 1:19
appointed 4:18	charter 4:6,10 6:7 7:19	days 12:2,2 13:5 14:1	Financial 13:20,21,22
appreciate 3:21 4:13,22	8:13 10:2	decide 9:3 16:13	15:12
9:16	Chief 13:19,21,22 15:12	deciding 8:11	find 7:18 8:17
appropriate 7:10	choice 3:19 4:3 7:17,22	decision 7:8 8:4 10:8	first 2:9 6:22 9:10
appropriateness 14:12	8:3 10:19	declare 6:3	fiscal 13:18 14:2,5,15
appropriates 7:1	Chorus 2:16 17:5	deliberate 2:12	15:11
appropriation 9:21	circulate 15:4	deliberated 5:16	focus 4:4,11
appropriations 7:5	circulation 14:17	deliberation 9:17	folks 11:22
approve 6:10	citation 3:9	deliberative 5:9	follow 15:18
asking 4:8	citizens 4:17	democracy 16:12	form 13:17
assign 13:3	civic 4:20	depart 2:10	format 13:14
assistance 13:14	clause 7:5	depending 15:1	formulations 13:13
attorney 7:7 13:15	close 16:3,18	deserves 11:1,2	14:7,10,15,18,21 15:9
16:17	Code 4:7 6:7	detail 9:4	forward 11:2
August 14:4 15:10	colleagues 10:12 12:4	determination 2:19	found 7:22 8:12
aye 2:16 12:11,14 17:5	COLLIER-MONTGO...	10:6 13:1	four 11:19
	1:19	different 10:18	Friday 1:8 2:3
B	Columbia 1:2,11	Director 1:18	front 10:3,4
ballot 6:11 8:16 12:17	comfort 7:16	discretion 7:12	fulfilled 14:4
13:12 16:6	comment 5:20 6:19 9:9	discussion 10:13 11:6	funds 7:1,10 9:21
based 10:3,5	15:19	11:20	future 15:19
basically 15:1,7	commentary 3:18	dispassionate 10:15,21	
batch 3:4	commented 3:16	distinguish 13:11	G
bears 13:8	comments 3:2,3,4,11	District 1:2,11	Gary 1:12,14 2:5 10:10
belongs 16:12	3:17 6:1		gathered 16:2
best 16:7	commission 6:16	E	gathering 15:22
beyond 16:1	commissioner 6:18	earlier 10:14 11:16	general 1:18 8:16 12:19
board 1:4,6,11,11,13,17	commissioners 6:17	easier 11:7	13:15,15 14:17 16:20
2:6,7 3:12 4:1,14,15	communicate 15:16	EDT 1:12	generally 11:14
4:15 6:17,19 9:7	complete 13:6	educating 11:11	goes 11:10
10:12 11:4 12:9,13	completely 7:8,11	educational 16:16	going 5:17 10:11
13:2,5 14:6 15:2	component 7:18 8:6	either 3:19 11:1 13:21	good 5:12 10:16 12:22
16:16,19	conclude 6:1	elected 5:1	government 1:1 4:18
Boggs 1:15 2:8,13 4:16	conclusion 10:16	elections 1:4,11,13,17	great 10:13 11:20
10:9,10 12:13,14	confirmed 4:19	2:6 3:13 4:1,15 8:14	Greenfield 1:15 2:8
briefly 6:21	consistent 4:9,10	11:4	4:16 6:14 9:8,10 12:9
business 14:1		enjoy 16:22 17:1	12:11 17:3

guess 16:11

H

Happy 2:3
hard 3:10
heading 16:15
hear 2:12 5:12
heard 5:14,21
hearing 3:22 4:5 5:15
 5:20 9:12 11:16 15:9
heartwarming 11:21
helpful 3:12 9:15 11:7
 11:13,20
helping 8:10 11:5
hold 14:6 15:3,8
HOLMAN 1:18
home 10:2
hopefully 4:13 5:10
hour 11:17
hours 11:19,19 14:13
Human 4:9 6:8 7:20
 8:18

I

identify 13:10
impact 13:19 14:2,6,15
 15:11
implement 7:10
important 9:15 14:19
incorporates 4:7 7:4
independence 5:11
independent 4:14,14
 4:20 7:8
indicated 8:7
information 9:12
initiative 6:4,6,10 7:1,4
 7:18 9:22 10:2,7 13:3
 13:4,11 15:5 16:4
integrity 5:11
interest 11:22
interesting 16:17
interests 16:7
issue 5:17 6:22 9:1,17
 9:20 12:1 15:3
issued 15:21
issues 3:14 11:8,12,14

J

J.C 1:15 2:8 4:16
job 4:1 11:4,7,7
joining 2:7
JULY 1:9
jurisdictions 3:15 7:22
 8:20

K

Karyn 1:15 2:8 4:16
 10:11

keep 3:15
key 7:15
kind 16:11
know 3:7 4:13,21 5:1
 8:22 10:20 11:21 16:3
 16:6

L

language 9:21 14:9,12
largely 8:19
law 6:6 7:15,21
legal 11:8,14
legislative 13:13,17
lobbies 4:22
long 16:5
look 15:8 16:18
lot 3:18 9:4,17 11:9
 12:16

M

matter 2:20 9:2 10:7
 12:22 17:8
mayor 4:18
means 9:14
measure 13:2,3,4,9,11
 15:5
measures 3:19 4:8
meeting 1:6,11 6:2 14:7
 14:8,14 15:3
meetings 11:18
member 1:15,15 2:13
 6:14 9:7,10 10:9,10
 12:9,11,13,14 16:16
 17:3
members 1:13 2:7 6:17
 6:19 15:6 16:20
memos 11:13
mentioned 3:9
merits 5:4 10:8,22
 11:14
moment 3:1
Monday 13:22 14:3
MONICA 1:18
monthly 11:18
morning 3:3
motion 2:10 4:12 5:18
 5:19,22 6:3,9,12 9:6
 9:19 12:8,12 17:1
move 11:2 16:21 17:1
multiple 15:15

N

name 2:5
need 14:3
needs 10:3
Neither 8:17
new 3:4 7:2
newspaper 14:17

nice 2:4
nominee 8:16
notice 1:12
notices 15:16
nugget 10:21
number 13:3,8

O

OAG 7:14
obviously 12:18 15:15
 15:20
Office 1:19 13:19
Officer 13:20,21,22
 15:12
Okay 2:17 12:6 17:4
once 8:1,21
open 3:20 4:4 8:6 9:22
 10:19
opine 4:1
opining 10:22
opponents 12:18
opportunities 15:19
opportunity 14:11
options 12:18
outcome 15:2

P

P-R-O-C-E-E-D-I-N-G-S
 2:1
p.m 1:12 2:2 17:9
page 7:13
parse 8:10
part 11:6 15:17 16:22
partially 3:20 8:6
participated 11:11
particular 7:14 8:9,21
partisan 8:14
party 8:15,16
pass 9:3
passes 7:9
pending 2:20
period 14:20
petition 15:4
petitions 15:21
pinpointed 7:14
place 14:8
plan 9:6 11:17
point 15:9,21 16:1
pointed 8:21
politicians 5:1
prepare 11:5 13:7,9,13
prepared 14:9
present 1:13,17 6:5
presiding 1:12
pretty 2:4
primaries 10:19
primary 3:20 4:4 8:6,15
 9:22

private 4:17
procedures 16:7
process 8:15
processes 15:2
proper 4:6 6:5,10 9:2
 10:6,7 11:2 13:13
 16:10
proposed 3:19 6:4 7:4
 14:12
provide 13:16
provided 15:12
public 2:19 5:6,20,20
 10:13 14:7,8,11,14
 15:3,7,8
publications 15:17
publish 14:14,18
published 14:17
purpose 13:9
purposes 7:3
pursuant 1:12
put 11:9

Q

questions 5:8 15:14
quorum 2:9
quote 4:6 6:10 8:14 9:2

R

raised 5:17
ranked 3:19 4:2 7:17,22
 8:2 10:19
RCV 10:1
read 3:5,14,18 7:13
readily 13:10
reading 3:13
really 3:10,11,12 10:12
 10:21 11:10 16:15,16
 16:17
reason 7:12 10:4,5
reasons 8:19 9:19
receipt 14:5
received 3:4
record 5:6,22 8:8 17:9
regard 7:16 16:4
regarding 15:9
Register 14:19
reiterate 9:11
remain 7:11
remains 7:7
reminder 5:12
request 13:18,21 14:1,3
requires 7:1
respect 7:17 8:5 13:1
 13:17
revenues 7:2
right 2:14 3:11 12:15
 15:13 17:6
Rights 4:10 6:9 7:20

8:18
road 16:5
roll-call 12:7
run 8:13
running 6:7

S

second 2:12,13 6:13,14
17:2,3
see 11:5,22
seeing 16:21
seen 9:14
sees 16:9
send 10:16 14:2
serial 13:3,8
servants 10:13
service 4:20
session 2:11,18 5:5,10
share 5:7 6:21
she'd 9:8
short 6:9 13:9
sides 12:1
signature 15:22
signatures 16:2
simply 8:4
single 5:16
sort 7:15
Special 1:6,11
spoken 5:4
staff 1:17 11:3 12:4
stated 6:12 7:7 9:18
statement 13:7,19 14:2
14:6,15,16 15:11
step 15:16
steps 12:16,20 15:1,8
15:15
Stroud 1:18 11:5 12:19
12:21 15:20
struggled 8:7
studied 3:8
study 3:6
subject 4:6 6:6,11 7:5
9:2 10:6,7 11:2,15
12:22
submissions 8:9
submit 14:16
submitted 3:2,8
summary 13:7 14:14
super 11:20
supplemental 3:3 8:9
Supreme 8:20
sure 3:13 16:8

T

take 2:22 14:8 15:14
16:18
talked 5:15
tasks 13:6

terms 8:3 9:5,20
Terri 1:18 11:5 15:20
testimony 3:2 5:14 9:13
thank 2:4 3:1 8:8 9:16
10:10 11:3 12:21
15:13 16:15 17:6
thanks 9:11 10:11
11:10 12:3,5
thing 2:10
things 4:5 16:13,14
think 8:2,7 9:13,19
10:15,18 11:8,18
thinking 6:21 9:5
third 11:10
Thompson 1:12,14 2:3
2:6,14,17 6:15 10:9
12:6,13,15 15:13 17:4
17:6
thoroughly 16:17
thought 5:11,16 11:9
thoughtful 10:15
thoughts 5:7
three 4:15 5:3,6 6:16,17
6:19 11:19 12:3
time 3:5 5:3,6,17 8:8
11:9 12:1,17
title 13:10
today 2:7 10:14 13:22
told 5:2
topic 7:21
track 3:15
Treatment 7:13
tremendous 11:4
trigger 14:20
true 10:12
truly 4:20
turn 7:15
two 3:19
typically 11:17

U

U.S 6:8
ultimately 8:12
unanimous 10:16 12:16
unconstitutional 8:1
understand 3:14 9:14
unwise 8:22

V

Video-Teleconference
1:12
views 5:2,7 10:19,20
11:15
violates 7:19 8:17
violation 10:1
vote 6:1,16,20 8:3 9:6
12:7,10
voter 6:4,10,22 16:3,8,8

voters 8:4 9:3 10:3,4,17
13:10 16:12,12
Votes 2:20 6:5 13:2
voting 3:20 4:3 7:18 8:1
8:3 10:19

W

want 2:22 3:7,10 4:12
6:19 8:8 9:11,16 11:3
16:13,14
wants 15:18
way 5:9,19
we'll 5:21,22 12:6
we're 5:9 8:10 10:22
we've 2:11 5:20
website 14:16
Wednesday 10:14
week 11:16
weekend 16:22 17:2
weigh 12:2 14:11
went 11:18 17:9
wisdom 3:18 8:3 11:1
wise 8:22
witnesses 7:6
work 4:17
worked 3:10
working 11:8
writing 11:16
written 3:2,3,4

X

Y

year 16:9

Z

zero 8:10

0

1

1-6:7
1001.16 6:8
14th 14:4 15:10
15 14:1

2

2:00 1:12 2:2
2:27 17:9
20 13:4
2023 1:9
2024 2:21 6:5
21 1:9
24 14:13

3

4

5

6

7

797 7:13

8

82 16:4
83 13:4

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This is to certify that the foregoing transcript

In the matter of: Special Board Meeting

Before: DC BOE

Date: 07-21-23

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate complete record of the proceedings.



Court Reporter

NEAL R. GROSS

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